

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7614

Petition of Brattleboro Carbon Harvest, LLC for )  
a Certificate of Public Good, pursuant to 30 )  
V.S.A. § 248(j), authorizing the construction and )  
operation of a landfill-gas-to-energy facility in )  
Brattleboro, Vermont )

Order entered: 7/13/2010

**I. INTRODUCTION**

This case involves a petition filed by Brattleboro Carbon Harvest, LLC ("BCH") requesting a certificate of public good ("CPG") under 30 V.S.A. § 248(j) to construct and operate a landfill-gas-to-energy facility located in Brattleboro, Vermont. In today's Order, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

**II. PROCEDURAL HISTORY**

On February 10, 2010, BCH filed a petition with the Public Service Board ("Board") requesting a certificate of public good under 30 V.S.A. § 248(j) to construct and operate a landfill-gas-to-energy facility in Brattleboro, Vermont. BCH submitted prefiled testimony, proposed findings, and a proposed order pursuant to the requirements of 30 V.S.A. § 248(j).

On March 5, 2010, BCH filed supplemental prefiled testimony and an exhibit.

In a March 10, 2010, memorandum, the Board requested additional information on how the proposed project meets the definition of a qualifying Sustainably Priced Energy Enterprise Development ("SPEED") resource under 30 V.S.A. §§ 8002(4) and (5) and the requirements of

Board Rule 4.304. On March 15, 2010, BCH filed a response to that request.<sup>1</sup> On March 23, 2010, the Vermont Department of Public Service ("Department") filed a letter stating that it did not oppose BCH's position that the proposed project is properly classified as a SPEED resource.

On April 16, 2010, the Board convened a workshop to discuss the petition, including historical operations at the proposed site, costs of the proposed project, and expected landfill gas generation rates. The workshop was attended by representatives of BCH, the Department, and the Vermont Agency of Natural Resources ("ANR"). On April 20, 2010, BCH filed second supplemental prefiled testimony and exhibits based on questions raised in the workshop.

Notice of the petition was sent on May 5, 2010, to all entities specified in 30 V.S.A. § 248(a)(4)(c) and other interested parties. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before June 4, 2010. A similar notice of the filing was published in *The Brattleboro Reformer* on May 7, 2010, and May 14, 2010.

On May 27, 2010, ANR filed a letter stating that it had no comments on the petition.

On June 4, 2010, the Department filed a letter stating that the petition does not raise any significant issue with respect to the substantive criteria of Section 248. In addition, the Department requested that, if the petition is granted, the CPG should include requirements for disclosures with regard to the renewable attributes for the proposed project.

### **III. FINDINGS**

1. BCH is a single-member, Vermont limited liability company formed in April, 2009, with its principal place of business in Burlington, Vermont. BCH was formed specifically to be the owner and operator of the proposed landfill-gas-to-energy facility. Barbagallo pf. at 2.

2. The proposed landfill-gas-to-energy facility will be located adjacent to the closed landfill in Brattleboro, Vermont, on property owned by Windham Solid Waste Management District ("WSWMD"). Barbagallo pf. at 2 and 6.

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1. March 15, 2010, letter from Brian Dunkiel, Esq., on behalf of BCH to Susan M. Hudson, Clerk of the Board.

3. The proposed generation facility will have a maximum capacity of 560 kW and will connect to the existing landfill's gas-collection system. Barbagallo pf. at 2 and 9.

4. The proposed project will include: (1) a 250 kW engine-generator and a 310 kW engine-generator, each housed in separate 22-foot-long by 8-foot-wide by 8-foot-high portable structures; (2) a control room, housed in a 26-foot-long by 8-foot-wide by 8-foot-high portable structure; and (3) an additional portable structure, similar in size to the other structures, to house gas-treatment equipment and for the storage of maintenance materials such as spare parts and lubricants. Barbagallo pf. at 8-9; Barbagallo 2nd supp. pf. at 5.

5. The landfill gas production for the proposed project is estimated to support 560 kW of capacity beginning in 2010. The engine-generators for the proposed project will operate efficiently down to about 60 percent of capacity. Based on current gas projections, the 250 kW engine-generator will be removed from service in 2020, and the 310 kW engine-generator will remain in service through 2029.<sup>2</sup> Barbagallo pf. at 12; Barbagallo 2nd supp. pf. at 4-5; exh. BCH-AB-24.

6. The proposed project is estimated to generate 3,890,535 kilowatt hours of electricity in year 2011, thereafter declining at approximately 5 percent per year as the landfill-gas-generation rate diminishes over time at the closed landfill. Barbagallo pf. at 12; Barbagallo 2nd supp. pf. at 3; exhs. BCH-AB-16 and BCH-AB-24.

7. Excess gas from the proposed project will be routed to the existing on-site, skid-mounted flare for combustion. The functional flare will combust any remaining collected landfill gas that is not used by the two engine-generators, including landfill gas collected while one or both generators are off-line for maintenance or repairs. Barbagallo pf. at 11.

8. The proposed project will interconnect with an existing 12.47 kV line owned by Central Vermont Public Service Corporation ("CVPS"). Proposed distribution upgrades include electric controls in the control room and power circuit breakers for each generator. The distribution

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2. Board Rule 5.402(C)(2) requires non-utility petitioners to "include a plan for decommissioning the project at the end of its useful life. This requirement does not apply to proposed generation facilities with a capacity of one MW or less."

upgrades may also include the replacement of existing underground conduit at the proposed site. Pearson pf. at 2; Adams pf. at 4; Barbagallo 2nd supp. pf. at 3.

9. The proposed project will be located on a site that previously hosted a landfill-gas-to-energy facility that closed in December 2008. BCH has purchased the remaining equipment from the previous landfill-gas-to-energy facility for \$50,000. The purchased equipment includes an existing gas collection system, and an existing control room and 250 kW engine-generator, along with the existing portable structures that housed them. The purchased equipment is non-functional and will require significant investment to return it to operation. Barbagallo pf. at 8-9; Barbagallo 2nd supp. pf. at 3 and 5.

10. The estimated cost of the proposed construction is \$929,500. Proposed project costs include \$176,000 to upgrade and restore the existing gas-collection system and rebuild the 250 kW engine-generator, and \$503,500 for new equipment that includes a 310 kW engine-generator and additional electrical controls and protections for interconnection to the CVPS distribution system. Barbagallo 2nd supp. pf. at 2-3.

11. The proposed project will be located on a parcel of land approximately 120 feet by 80 feet in size. The site is currently enclosed within a woven wire fence, 6 feet in height, with gated access that will be secured whenever no operating personnel are on-site. The site is predominately unpaved but level and hardened enough to drive on, and has generally sandy soils. Barbagallo pf. at 5.

12. The gas purchase and lease agreement with the WSWMD provides BCH the right to use the land for 25 years and includes the rights to the gas produced by the landfill. Barbagallo pf. at 2; exh. BCH-AB-2.

13. The lease agreement includes additional land upon which BCH intends to construct a greenhouse to utilize ancillary heat produced by the landfill-gas engines and the right to use one acre of landfill area for the production of algae. Both the greenhouse and algae production are not part of the proposed project. The future greenhouse, when constructed, will occupy the northeast corner of the site. The existing fence will be removed in this location and its ends terminated at the greenhouse walls to ensure the continued control of access to the site. Barbagallo pf. at 5.

14. The proposed project is being developed under the SPEED standard-offer program. A standard-offer contract has been signed with the SPEED Facilitator for the proposed project. The standard-offer contract provides for the sale of the proposed project output and other attributes, including the renewable energy credits, at a fixed price of \$ 0.12 per kWh for a period of 15 years. Barbagallo pf. at 3; exh. BCH-AB-17.

**Orderly Development of the Region**

[30 V.S.A. § 248(b)(1)]

15. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 16 through 18, below.

16. BCH provided notice of the proposed project to the Brattleboro Selectboard and Planning Commission and the Windham Regional Commission on September 8, 2009. Letters from the Town Planning Director and the Windham Regional Commissioner both state that the proposed project will not interfere with the orderly development of the Town, will not have adverse aesthetic impacts, and will have positive impacts on local energy production and air quality. Barbagallo pf. at 17; exhs. BCH-AB-12 and BCH-AB-13.

17. The proposed project conforms with the Brattleboro Town Plan in that it involves the development of local, renewable energy resources and siting of generation facilities so as to minimize their visual impact on ridgelines, slopes, and open areas. Barbagallo pf. at 17; exhs. BCH-AB-12 and BCH-AB-14.

18. The proposed project is consistent with the Windham Regional Plan in that it promotes the use of renewable energy resources, including landfill methane, and implements land-use strategies that foster and support sustainable energy. Barbagallo pf. at 17; exh. BCH-AB-15.

**Need for Present and Future Demand for Service**

[30 V.S.A. § 248(b)(2)]

19. The proposed project is a qualifying SPEED facility and no part of the proposed project is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers. Barbagallo pf. at 13.

**Discussion**

Pursuant to 30 V.S.A. § 8005(b)(8):

a demonstration of compliance with subdivision 248(b)(2) of this title, relating to establishing need for the facility, shall not be required if the facility is a SPEED resource and if no part of the facility is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers.

Accordingly, BCH does not need to demonstrate compliance with this criterion.

**System Stability and Reliability**

[30 V.S.A. § 248(b)(3)]

20. The proposed project will not adversely affect system stability and reliability. This finding is supported by findings 21 through 23, below.

21. A System Impact Study was prepared for the proposed project. The proposed project will not adversely affect system stability and reliability, provided that BCH implements the following system protection and control strategies recommended in the System Impact Study:

- a. Start/stop frequency controls must be installed to prevent the generating units from starting and stopping more than six times per hour.
- b. All recommendations in Section 5, Protection and Interconnection Requirements, of the System Impact Study must be implemented to ensure that the proposed project will not have negative impacts on existing protection system performance, reliability, and safety.
- c. The interconnection agreement between CVPS and BCH must include operating terms and conditions that cover generator power factor, tripping, lockout, and restart.

Pearson pf. at 2-3; exh. BCH-EP-2.

22. The proposed project complies with the interconnection requirements of Board Rule 5.500. Barbagallo 2nd supp. pf. at 3.

23. BCH will bear all costs to interconnect the proposed project to the CVPS distribution system. Barbagallo pf. at 28; Pearson pf. at 3.

#### Discussion

The System Impact Study concluded that the proposed project will not impact system stability and reliability in part due to an interconnection agreement between CVPS and BCH that includes certain terms and conditions. Accordingly, we require that BCH, prior to commissioning the generators, file with the Board and the Department a copy of the signed interconnection agreement.

#### **Economic Benefit to the State**

[30 V.S.A. § 248(b)(4)]

24. The proposed project will result in an economic benefit to the state and its residents. This finding is supported by findings 25 through 28, below.

25. The proposed project will contribute to the State meeting its energy and sustainability goals by providing renewable in-state generation and offsetting the air emissions associated with fossil-fuel electric generation. Barbagallo pf. at 4.

26. The proposed project is expected to generate state and local property taxes. Barbagallo pf. at 18.

27. BCH will make monthly payments for the purchase of landfill gas and lease of land to WSWMD according to its signed lease. Barbagallo pf. at 18.

28. The construction of the proposed project will produce some jobs, potentially from local sources. Barbagallo pf. at 17.

#### **Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

29. The project, as proposed, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is

supported by findings 30 through 70, below, which are the criteria specified in 10 V.S.A. §§ 1424(a)(d) and 6086(a)(1)-(8)(a) and (9)(k).

### **Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

30. The proposed project will not have an undue adverse effect on public health and safety. This finding is supported by findings 31 through 33, below.

31. The proposed project will be in a fenced-off area to ensure access to the site is controlled. Barbagallo pf. at 5; Adams pf. at 10.

32. A functional flare will combust any remaining collected landfill gas that is not used by the two engine-generators. Barbagallo pf. at 11.

33. The electric controls for the proposed project will include a monitoring and notification system to alert the facility operator, both on and off-site, if irregularities occur in operation of the engine-generators, such as unexpected landfill-gas-flow rates, temperatures, and pressures. The proposed facility will be designed to shut down in the event of a significant deviation from the expected performance, and will require a manual restart after the deviation has been resolved. Adams pf. at 10.

### **Outstanding Resource Waters**

[10 V.S.A. § 1424(a)(d)]

34. The proposed project will not be located on or in the vicinity of any outstanding resource waters. Adams pf. at 2.

### **Air Pollution**

[10 V.S.A. § 6086(a)(1)]

35. The proposed project will not result in undue air pollution. This finding is supported by findings 36 through 38, below.

36. The proposed project is subject to an existing air permit from ANR's Air Pollution Control Division for the operation of the 250 KW engine-generator. The existing permit was



transferred to BCH by the previous owner of the engine-generator that operated at the proposed site. Barbagallo pf. at 15; exh. BCH-AB-10.

37. The operation of the proposed 310 kW engine-generator is unlikely to require the issuance of a modified permit. Before adding the 310 kW engine-generator to the proposed project, BCH will inquire with the Air Pollution Control Division as to whether a permit modification will be necessary to install and operate the second unit. BCH will not operate the second unit without authorization from ANR. Barbagallo pf. at 15; exh. BCH-AB-10.

38. The proposed engine-generators will be housed in enclosures to reduce noise from engine combustion and exhaust and the radiators' cooling fans. Noise from the proposed project will be attenuated through the use of acoustically insulated enclosures, muffled engine exhaust systems, and electrically driven radiator motors. Barbagallo pf. at 24-25.

#### Discussion

The operation of the 310 kW engine-generator for the proposed project may require a permit modification from ANR's Air Pollution Control Division. Accordingly, prior to the installation and operation of the 310 kW engine-generator for the proposed project, we require BCH to obtain the necessary authorization from ANR.

#### Water Pollution

[10 V.S.A. § 6086(a)(1)]

39. The proposed project will not result in undue water pollution. This finding is supported by findings 40 and 41, and by the specific findings under the criteria of 10 V.S.A. §§ 6086(a)(1)(A) through (G), below.

40. The WSWMD currently holds a stormwater permit issued by ANR's Stormwater Management Section. The permit covers all impervious areas including the proposed project area. The Stormwater Management Section has confirmed that the proposed project does not need to obtain a new or amended stormwater permit. Barbagallo pf. at 16; exh. BCH-AB-11.

41. The proposed engine-generators will be located within portable structures that are situated on concrete slabs. Any oil spills associated with the proposed generation equipment will

be cleaned up immediately with the use of specialized sorbents. Used sorbents will be disposed of at the WSWMD's transfer station. Barbagallo pf. at 20.

### **Headwaters**

[10 V.S.A. § 6086(a)(1)(A)]

42. The proposed project is not located in a headwaters region of the State. Adams pf. at 3.

### **Waste Disposal**

[10 V.S.A. § 6086(a)(1)(B)]

43. The proposed project will meet applicable health and environmental conservation regulations regarding the disposal of wastes. This finding is supported by findings 44 and 45, below.

44. The proposed project will not generate significant amounts of waste during its construction or operation. Barbagallo pf. at 20.

45. Used oil and worn engine parts from the proposed project will be recycled. Any ancillary waste that is generated from the proposed project will be placed in an on-site container and periodically disposed of at the WSWMD transfer station. Barbagallo pf. at 20.

### **Water Conservation**

[10 V.S.A. § 6086(a)(1)(C)]

46. The proposed project will not require the regular use of water and will have no water service. Restroom facilities will be provided at the adjacent WSWMD facility or at the proposed greenhouse when constructed. The occasional need for water by the proposed project will be supplied by the adjacent WSWMD facility or greenhouse when constructed. Barbagallo pf. at 28; Adams pf. at 6-7.

**Floodways**

[10 V.S.A. §§ 6086(a)(1)(D)]

47. The proposed project is not located within a floodway and a floodway fringe determination has not been made. The proposed project is roughly 900 feet away from the Connecticut River and some 100 feet in elevation above the river. Given these factors and the drainage shed's topographic features, the proposed project will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding. Adams pf. at 5; exh. BCH-DA-2.

**Streams**

[10 V.S.A. §§ 6086(a)(1)(E)]

48. The proposed project will have no impact on streams, since the project site is not located on or immediately adjacent to the banks of a stream. The proposed project is approximately 900 feet west of the western bank of the Connecticut River. A capped municipal solid waste landfill and a railroad are located between the banks of the river and the proposed project area. Adams pf. at 6.

**Shorelines**

[10 V.S.A. §§ 6086(a)(1)(F)]

49. The proposed project does not involve any development along a shoreline since the project site is approximately 900 feet west of the western bank of the Connecticut River. Adams pf. at 6.

**Wetlands**

[10 V.S.A. § 6086(a)(1)(G)]

50. The proposed project will not unduly impact wetlands. No Class I, II, or III wetlands are located within 3,800 feet of the proposed project. Adams pf. at 6.

**Sufficiency of Water and Burden on Existing Water Supply**

[10 V.S.A. §§ 6086(a)(2)&amp;(3)]

51. The proposed project will not place an unreasonable burden on the existing water supply. A water source and restroom facilities will be provided at the adjacent WSWMD facility or at the proposed greenhouse when constructed. Water required for the proposed construction and the occasional need for water for the operation of the proposed engine-generators will be supplied by the adjacent facilities. Barbagallo pf. at 28; Adams pf. at 6-7.

**Soil Erosion**

[10 V.S.A. § 6086(a)(4)]

52. The proposed project will not result in unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by findings 53 through 55, below.

53. The proposed project is located on a previously developed site. The proposed engine-generators will be located in portable structures on existing concrete pads. Other portable structures for the proposed project will be located on existing gravel pads. Adams pf. at 4.

54. The proposed project may require the replacement of existing underground electrical conduit, requiring the digging of an 18-inch deep trench. In the event that such conduit is necessary, the trench will be backfilled, seeded, and mulched shortly after completion of the excavation. Adams pf. at 4.

55. The proposed project will be located on predominately sandy soils with an average grade of approximately 2 percent and a maximum grade of less than 5 percent. Because the proposed project is located on flat grades and sandy soils and will require minimal soil disturbance, no additional erosion control measures will be employed. Adams pf. at 4.

**Transportation Systems**

[10 V.S.A. § 6086(a)(5)]

56. The proposed project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. This finding is supported by findings 57 and 58, below.

57. The construction of the proposed project will require no more than 20 visits for workers and 4 delivery vehicles. Most or all of the equipment for the proposed project will be delivered by conventional tractor trailers. The 310 kW engine-generator purchased for the proposed project may require a standard over-wide permit. Adams pf. at 9.

58. The operation and maintenance of the proposed project will generate an average of less than one trip per day in an automobile or pick-up truck on existing roads that currently support deliveries to an adjacent recycling facility and other businesses. Adams pf. at 9.

### **Educational Services**

[10 V.S.A. §§ 6086(a)(6)]

59. The proposed project will not cause an unreasonable burden on the ability of the Town of Brattleboro to provide educational services. Barbagallo pf. at 20.

### **Municipal Services**

[10 V.S.A. §§ 6086(a)(7)]

60. The proposed project will not cause an unreasonable burden on municipal services of the Town of Brattleboro. The Town of Brattleboro has expressed support for the proposed project. Barbagallo pf. at 22; exhs. BCH-AB-12 and BCH-AB-18.

### **Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

61. The proposed project will not have an undue adverse impact on the scenic or natural beauty, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 62 through 68, below.

62. The proposed project site is aesthetically consistent with the developed commercial/industrial area in which it will be located. The surrounding properties are industrial in nature with no residences abutting or near the proposed project. The proposed project is

adjacent to the WSWMD regional waste management facilities, including the closed landfill and transfer station. Barbagallo pf. at 23.

63. Letters from the Brattleboro Town Planning Director and Windham Regional Commission have both stated that the proposed project will not have an adverse aesthetic effect. Barbagallo pf. at 23; exhs. BCH-AB-12 and BCH-AB-13.

64. The proposed project is located at a site that previously hosted a landfill-gas-to-energy facility. The proposed project will include the addition of three portable structures that are similar in size and appearance to the two existing structures at the site. Barbagallo pf. at 22.

65. The proposed site is serviced by existing overhead electric and communication lines. No new overhead electric or communication lines are proposed for the project. On-site electric and communication lines for the proposed project will be underground. Barbagallo pf. at 22.

66. The proposed project is accessed using the existing entrance to the WSWMD facilities. No new roads or pavement will be required for the proposed project. Barbagallo pf. at 22.

67. There are no known rare or irreplaceable natural areas in the vicinity of the proposed project. Adams pf. at 7.

68. The Vermont Division of Historic Preservation has concluded that the proposed project will have no effect on any listed or eligible historic sites or archeological resources. Barbagallo supp. pf. at 1; exh. BCH-AB-21.

#### **Necessary Wildlife Habitat and Endangered Species**

[10 V.S.A. § 6086(a)(8)(A)]

69. The proposed project will not have any adverse impacts on wildlife habitats or any threatened or endangered species, as there are none known to be in or near the proposed project area. Adams pf. at 7.

#### **Development Affecting Public Investments**

[10 V.S.A. § 6086(a)(9)(K)]

70. The proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or

materially jeopardize or interfere with the function, efficiency, or safety of the public's use or enjoyment of or access to such facilities, services, or lands. There is a public boat access on the Connecticut River located approximately one-half mile down Old Ferry Road from the proposed project. The river is 900 feet from the proposed project. Neither the boat access nor river will be adversely impacted by the proposed project. Barbagallo pf. at 26.

#### **Least-Cost Integrated Resource Plan**

[30 V.S.A. § 248(b)(6)]

71. BCH is not a distribution utility and is not required to have an integrated resource plan. Barbagallo pf. at 27.

#### **Compliance with Electric Energy Plan**

[30 V.S.A. § 248(b)(7)]

72. The proposed project is consistent with the *Vermont Electric Plan* because it promotes the Plan's goals to diversify supply resources, maintain appropriate contributions from renewable resources, and reduce Vermont's dependence on fossil fuels and other resources that are subject to dramatic price changes and possible supply disruptions. Barbagallo pf. at 27.

73. The Department filed a determination on June 30, 2010, that the proposed project is consistent with the *Vermont Electric Plan*, in accordance with 30 V.S.A. § 202(f).

#### **Outstanding Resource Waters**

[30 V.S.A. § 248(b)(8)]

74. The proposed project will not be located near any outstanding resource waters. Adams pf. at 2.

#### **Existing or Planned Transmission Facilities**

[30 V.S.A. § 248(b)(10)]

75. The proposed project can be served economically by existing or planned transmission facilities without undue adverse impact on Vermont utilities or customers. The proposed project

will interconnect into an existing CVPS distribution system and will utilize system protection and control strategies to prevent adverse impacts to system stability and reliability. Barbagallo pf. at 27; Pearson pf. at 4-5.

### **Renewable Energy Credits**

Under the SPEED standard-offer program, BCH is required to transfer the proposed project's attributes, including the renewable energy credits ("RECs"), to the SPEED Facilitator. In its June 4 letter, the Department stated concerns about BCH's future representations regarding the renewable attributes associated with the proposed project. The Department maintained that BCH may not properly describe its power as renewable unless it also discloses that it has transferred the renewable attributes, and that this disclosure will protect consumers from making decisions based on inaccurate information and protect the value of the RECs in the marketplace. The Department requested that, if the petition is granted, the CPG should include requirements for the following disclosures: (1) that BCH acknowledges that it has sold all of the products directly attributable to the renewable production of electricity to a third party, and, as such, BCH agrees that it will not cause any RECs or other attributes associated with the proposed project to be double counted; (2) that the heat produced as a byproduct of the generation of electricity by the proposed project is not directly attributable to electricity production at the facility;<sup>3</sup> and (3) BCH's representation that its production of energy from a renewable resource has environmental or energy security benefits, even though RECs from the proposed project have been sold, shall not constitute double counting.

The Department also requested that the CPG should include language defining "double counting." The Department contended that double counting occurs when the disaggregated attributes associated with a single MWh of generation are ultimately sold to, or claimed by, more than one consumer. The Department further defined double counting to include: (1) when the same REC is sold by one party to more than one party; (2) marketing the energy for which RECs

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3. In accordance with the Board's Order of 10/16/09 at 14, in Docket 7533, the ancillary heat associated with a standard-offer project is not defined as other products related to electricity generation that must be transferred to the SPEED Facilitator.



have been separately sold as renewable in calculating another entity's product or portfolio resource mix; and (3) when a REC is simultaneously sold to represent renewable electricity to one party, and one or more attributes associated with the same MWh of generation (such as CO<sub>2</sub> reduction) are also sold to or claimed by another party.

The Department represented that BCH did not object to the inclusion of these requirements for disclosures in its CPG.

Consistent with BCH's standard-offer contract and Board Orders, BCH will transfer the ownership of all renewable attributes associated with the proposed project to the SPEED Facilitator, and the heat produced as a byproduct of the generation of electricity is not considered a product related to electricity generation that must be transferred to the SPEED Facilitator. The Department has not explained why its proposed requirements regarding double counting will protect the value of the RECs in the market place or are otherwise appropriate given that BCH will not hold the renewable attributes for the proposed project. Because the renewable attributes of all non-methane standard-offer projects will be transferred to the SPEED Facilitator, we conclude that this issue is more appropriately addressed in Docket 7533, establishing a standard-offer program for qualifying SPEED resources.<sup>4</sup> Because the standard-offer program is both new and complex, the SPEED Facilitator, participants, and Board staff continue to identify implementation issues that need to be resolved. We encourage the Department to present its concerns with regard to double-counting of renewable attributes in Docket 7533. We include in today's Order a condition requiring BCH to comply with any applicable disclosure requirements that are established in other proceedings, including Docket 7533, and Board Rules.

Therefore, we conclude that the CPG should not include any additional, specific requirements regarding disclosures addressing the transfer of the renewable attributes associated with the proposed project. However, as represented by the Department, BCH has agreed to the proposed disclosures. Today's Order and CPG require that construction, operation, and maintenance of the proposed project shall be in accordance with the plans and representations as

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4. On September 30, 2009, the Board issued an Order, in Docket 7533, establishing a standard-offer program. On October 16, October 28, and December 31, 2009, and June 24, 2010, the Board issued Orders addressing certain implementation issues.

submitted in these proceedings. Accordingly, we expect that BCH will abide by these disclosure requirements related to the transfer of renewable attributes.

#### **IV. CONCLUSION**

Based upon all of the above evidence, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

#### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The proposed installation and operation of a landfill-gas-to-energy facility by Brattleboro Carbon Harvest, LLC in Brattleboro, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good to that effect shall be issued.
2. Construction, operation, and maintenance of the proposed project shall be in accordance with the plans and representations as submitted in these proceedings. Any material deviation from these plans must be approved by the Board.
3. The proposed project is hereby certified as a Sustainably Priced Energy Enterprise Development (SPEED) project.
4. Brattleboro Carbon Harvest shall comply with any applicable requirements regarding the disclosure of renewable attributes that are established in other proceedings, including Docket 7533, and Board Rules.
5. Brattleboro Carbon Harvest shall implement the system protection and control strategies recommended by the System Impact Study for the proposed project.
6. Brattleboro Carbon Harvest shall file with the Board and the Department of Public Service, prior to commissioning the proposed generators, a copy of the signed interconnection

agreement between Central Vermont Public Service Corporation and Brattleboro Carbon Harvest.

7. Brattleboro Carbon Harvest shall pay the entire cost of the distribution system upgrades.

8. Brattleboro Carbon Harvest shall comply with the conditions of the air permit issued by the Air Pollution Control Division of the Agency of Natural Resources for the operation of the proposed 250 kW engine-generator. Prior to the installation and operation of the proposed 310 kW engine-generator, Brattleboro Carbon Harvest shall obtain any necessary authorization from the Air Pollution Control Division.

9. Prior to proceeding with construction, Brattleboro Carbon Harvest shall obtain all necessary permits and approvals. Construction, operation, and maintenance of the proposed project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Agency of Natural Resources.

Dated at Montpelier, Vermont this 13th day of July, 2010.

<u>s/ James Volz</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/ David C. Coen</u>	)	
	)	BOARD
	)	
<u>s/ John D. Burke</u>	)	OF VERMONT

OFFICE OF THE CLERK

FILED: July 13, 2010

ATTEST: s/ Susan M. Hudson

Clerk of the Board

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*